Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's	)	WT Docket No. 95-157
Rules Regarding a Plan for	)	RM-8643
Sharing the Costs of	)	
Microwave Relocation	)	

COMMENTS OF SPRINT SPECTRUM L.P.

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Amendment to the Commission's Rules	)	WT Docket No. 95-157
Regarding a Plan for Sharing	)	RM-8643
the Costs of Microwave Relocation	)	

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In its *Further Notice of Proposed Rulemaking*, the Commission tentatively concludes that microwave incumbents who relocate themselves should be allowed to obtain reimbursement rights and collect reimbursement under the newly-adopted cost-sharing plan from later-entrant PCS licensees. The Commission contends that allowing incumbent participation in cost-sharing might facilitate system-wide relocations and expedite the deployment of PCS. Sprint Spectrum[1/] urges the Commission not to permit incumbents to participate directly in cost-sharing plans.

[1/] Sprint Spectrum L.P. ("Sprint Spectrum") is a joint venture formed by subsidiaries of Sprint Corporation, Tele-Communications, Inc., Comcast Corporation, and Cox Communications, Inc.

I. ALLOWING INCUMBENTS TO PARTICIPATE IN COST-SHARING ALTERS THE STRUCTURE OF THE COMMISSION'S RULES.

The Commission's PCS rules are premised on the *sharing* and relocation of the 1.85-1.99 GHz band among PCS licensees and microwave incumbents.[2/] If a PCS licensee can operate in a geographic area, in compliance with all applicable FCC rules, without causing interference to a microwave incumbent, it need not relocate that incumbent. The Commission's plan for PCS emphatically is not a "band-clearing" plan in which all incumbents necessarily will be compensated for relocating to suitable frequencies in other bands or other media. Rather, the choice of whether to relocate an incumbent rests with the PCS licensee (assuming that interference can be avoided).

Permitting incumbents to participate directly in cost-sharing groups alters the structure of the Commission's rules. Even incumbents that would not suffer harmful interference from PCS operations could gain the right to be relocated at the PCS licensees' expense. This fundamental change in the rules governing PCS, at this late date, is contrary to the regulatory structure on which bidders relied in participating in PCS auctions. It should not be adopted.

[2/] *See* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *Third Report and Order and Memorandum and Order*, 8 F.C.C. Rcd. 6589 (1993); Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *Memorandum Opinion and Order*, 9 F.C.C. Rcd. 1943 (1994).

II. NO SAFEGUARDS EXIST TO CHECK THE BEHAVIOR OF SELF-RELOCATING MICROWAVE INCUMBENTS.

Sprint Spectrum supported the recently adopted cost-sharing rules because it understood that all PCS licensees would share the same incentive to minimize the costs of relocating incumbents. Microwave incumbents will not have a similar incentive. On the contrary, enabling microwave incumbents to participate in cost-sharing would have untoward results because no safeguards exist to check the behavior of the incumbents. Combining an incumbent's unfettered discretion to choose its own replacement facilities with the prospect of reimbursement is analogous to handing the incumbent a blank check.

A microwave incumbent who knows in advance that it will be able to recover some of its expenses will have little incentive to minimize costs. Lacking ultimate responsibility for the bill, microwave incumbents may engage in excessive expenditures and thereby unfairly tax later-entering PCS licensees. Because there is no mechanism to police such behavior, the Commission should reject its proposal.

For example, prior proceedings reveal that some microwave incumbents desire and feel they are entitled to upgraded digital facilities even when an analog replacement is sufficient to satisfy the Commission's "comparable facilities" requirement. These incumbents seek to replace old 2 GHz analog technology with new digital technology on the relocated channel. The Commission has acknowledged that PCS licensees are not required to replace existing analog facilities with digital equipment when an acceptable

analog solution exists.[3/] However, if incumbents are aware of the prospect of reimbursement for their choice of replacement facilities, they will have little incentive to restrain the urge to purchase *superior*, not comparable, facilities.

Similarly, if they are ultimately not responsible for the bill, microwave incumbents will have no incentive to minimize transaction costs such as consulting and legal fees. Although the Commission has limited the amount of recoverable transaction costs to a percentage of total hard relocation costs,[4/] *any* percentage which results from unnecessary expenditures is unfair to later-entrant PCS licensees.

Unnecessary digital upgrades and excessive transaction costs are merely examples of areas vulnerable to abuse by microwave incumbents under the Commission's proposal. Allowing incumbent participation in cost-sharing both exposes later-entrant PCS licensees to unwarranted expense and invites the inefficient expenditure of resources. Any potential benefits of the Commission's proposal is substantially outweighed by the risk of abuse and the resultant inefficient allocation of resources. Consequently, the Commission should prohibit participation of microwave incumbents in the newly adopted cost-sharing plan.

[3/] *See* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, FCC 95-426, (1995) *Notice of Proposed Rulemaking*, ¶ 77.

[4/] *See* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, FCC 96-196, (1996) *First Report and Order*, ¶ 43.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD ADOPT SAFEGUARDS TO PROTECT LICENSEES FROM POTENTIAL ABUSE OF THE COST-SHARING RULES.

The Commission requests comment on how subsequent PCS licensees could be protected from being required to pay a larger amount to an incumbent that relocates itself than to another PCS licensee who has an incentive to minimize expenses. Sprint Spectrum is unable to conceive of any mechanism capable of replicating the type of cost-minimizing incentives that exist in the current framework of individual negotiations.The potential for incumbent abuse makes excluding incumbents from the cost-sharing plan the most prudent course to follow.

If, however, the Commission decides to allow incumbents to self-relocate and to participate in cost-sharing, it must adopt various safeguards to protect later-entering PCS licensees. Self-relocating incumbents should be required to submit an independent, third party appraisal of estimated relocation costs for comparable facilities to the Clearinghouse prior to beginning relocation efforts. All self-relocating incumbents should be subject to the same rules for reimbursement as PCS licensees. The same $250,000 cap on relocation costs that applies to PCS licensees would also apply to self-relocating incumbents. To prevent discretionary replacement of towers by incumbents at the expense of licensees, Sprint Spectrum proposes independent, advance evaluation of tower replacement costs be filed with the clearinghouse by the incumbent prior to beginning work. Filing third party estimates of replacement costs with the Clearinghouse will ultimately not prevent potential incumbent abuse. Even if the estimate filed by a self-relocating incumbent appears excessive, the Clearinghouse has no authority to take any

action to force incumbents to either trim costs or delay relocation efforts. Such policing is not the Clearinghouse's function. Ultimately, the inclusion of incumbents in the cost-sharing plan will enable incumbents to circumvent the negotiations process and thereby undermine the inherent cost-minimizing protections available to PCS licensees under the current framework.

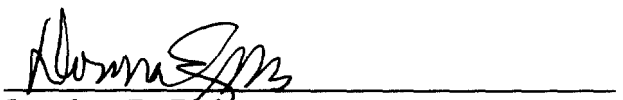
IV. THE COMMISSION SHOULD ELIMINATE THE VOLUNTARY PERIOD FOR THE D, E, AND F BLOCKS, BUT NOT FOR THE C BLOCK.

As Sprint Spectrum has commented in previous proceedings, it does not believe the voluntary period serves any useful purpose. As the Commission has indicated in its *Further Notice*, in the case of D, E, and F blocks, bidding has not commenced and there are no ongoing negotiations between PCS licensees and incumbents.[5/] Therefore, Sprint Spectrum believes it would be appropriate to eliminate the voluntary period entirely for the D, E, and F blocks. However, since the *Further Notice* was released, the C block auctions have concluded. C block licensees are in a similar posture as A and B block licensees. Accordingly, Sprint Spectrum does not support altering the voluntary period for the C block without a similar change in the rules for A and B block licensees.

[5/] *See* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, FCC 96-196, (1996), *Further Notice of Proposed Rulemaking*, ¶ 95.

Respectfully submitted,

SPRINT SPECTRUM L.P.



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